



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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No. 78/106

June 22, 1978

TO COUNTY ASSESSORS:

PROPOSITION 13 - ATTORNEY GENERAL'S SUMMARY OF
ISSUES NEEDING LEGISLATIVE CLARIFICATION

The Attorney General recently sent the attached letter to the Legislature. The letter identifies several major issues that need legislative clarification as a result of the Jarvis-Gann Initiative. Most of these issues directly affect assessors' duties.

New questions and problems are becoming evident as we continue to study the effects of Proposition 13. The State Controller has requested an Attorney General's opinion on the question of the appropriate tax rate applicable to the 1978-79 unsecured roll.

Sincerely,

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:sk
Enclosures

ISSUES TO BE CONSIDERED FOR
LEGISLATIVE CLARIFICATION

SECTION 1(a): "TIME MAXIMUM AMOUNT OF ANY AD VALOREM TAX ON REAL PROPERTY SHALL NOT EXCEED ONE PERCENT OF THE FULL CASH VALUE OF SUCH PROPERTY. THE ONE PERCENT TAX TO BE COLLECTED BY THE COUNTIES AND APPORTIONED ACCORDING TO LAW TO THE DISTRICTS WITHIN THE COUNTIES."

1. Legislation is advisable to define what the one percent limitation means and how it should be applied. This section could be read to create a new one percent tax, grant the counties authority to levy it, and, distribute it to themselves, the cities, and the districts as the Legislature provides.

This section could also be read merely to provide a cap or maximum limit on the present system. In that case, the one percent rate is susceptible to several definitions. For example, the one percent tax rate could be the average of all county, city and district rates. In that case, however, taxpayers in some tax code areas could pay less than one percent and others more. On the other hand, one percent could mean that the sum of the county, city, and district rates in the tax code area with the highest sum could not exceed one percent. Under this system, existing law would make it difficult to levy the full one percent on much of the property in a county. Under present law, counties, cities, and districts are required to levy a uniform tax rate throughout their respective service areas. A county, for example, cannot charge a property owner in the unincorporated area of the county a higher county general rate than it does a taxpayer in a city. If this continues to be true, and, for example, a county tax rate is scaled down from \$3 to 80 cents within a city, that is all the county could charge everywhere else in the county, resulting in less than a one percent rate in certain unincorporated areas. To overcome this, the Legislature could provide for some type of divided tax structure so that the full one percent could be levied everywhere in the county. A study of the tax structures in the States of Washington and Nevada would provide two potential solutions. However, some approaches could require the Legislature to propose a constitutional amendment.

2. The Legislature should define the unqualified word "districts" as used in the second sentence of section 1(a) and indicate whether that would include counties, cities, and school districts.

3. Legislation is appropriate to clarify whether the phrase "shall not exceed one percent of the full cash value" precludes the application of the homeowners' exemption.

4. Legislation is appropriate to clarify whether the one percent applies to the "full cash value" of open space lands and golf courses or to the reduced values of such property presently authorized by article 13, sections 8 and 10, of the Constitution.

SECTION 1(b): "THE LIMITATION PROVIDED FOR IN SUBDIVISION (a) SHALL NOT APPLY TO AD VALOREM TAXES OR SPECIAL ASSESSMENTS TO PAY THE INTEREST AND REDEMPTION CHARGES ON ANY INDEBTEDNESS APPROVED BY THE VOTERS PRIOR TO THE TIME THIS SECTION BECOMES EFFECTIVE."

1. It should be determined whether the phrase "redemption charges" includes the principal on the indebtedness. The probable intent is that both principal and interest would fall outside the one percent limitation.

2. To the extent permitted by its broad language, the Legislature should define this section to coincide with the Contracts Clauses of the United States and California Constitutions. This section is an extremely important one, and an overly narrow interpretation could seriously impair the credit of the State of California and its local entities. Therefore it should be defined by the Legislature in such a way as to insure that the security for both state and local bonds outstanding as of July 1 is not substantially impaired.

SECTION 2(a): "THE FULL CASH VALUE MEANS THE COUNTY ASSESSORS VALUATION OF REAL PROPERTY AS SHOWN ON THE 1975-1976 TAX BILLS UNDER 'FULL CASH VALUE'; OR THEREAFTER, THE APPRAISED VALUE OF REAL PROPERTY WHEN PURCHASED, NEWLY CONSTRUCTED, OR A CHANGE IN OWNERSHIP HAS OCCURRED AFTER THE 1975 ASSESSMENT. ALL REAL PROPERTY NOT ALREADY ASSESSED AS TO THE 1975-1976 TAX LEVELS MAY BE REASSESSED TO REFLECT THAT VALUATION."

*1. The Legislature should define the term "newly constructed." For example, it should be determined whether it includes a large addition to an existing building and, if so, whether the addition only must be newly assessed or whether the entire building must be reassessed.

*2. The Legislature should define what is meant by "change of ownership." Does it include changes or terminations of partial interests in real property such as partners, shareholders, joint tenants, and transfer upon death of a spouse or a dissolution of a marriage?

*3. The Legislature might consider whether "full cash value" as defined in this section includes state assessed property such as public utilities, intercounty pipelines, etc.

*4. Pursuant to Article XIII of the Constitution sections 3(j) and 8, the Williamson Act, and the New Timber Tax Law, certain agricultural and timberlands are assessed at below market value. Some of the Williamson Act contracts and all of the timber preserves were created after the 1975-1976 lien date. The Williamson Act and the Timber Tax Law reflect established important state priorities which do not seem to conflict with the intent of Proposition 13. However, it would be advisable for the Legislature to reconcile these provisions.

*5. The Legislature should provide guidance on the relationship between section 2(a) and the Timber Yield Tax to avoid double taxation of timber.

*6. Assessors should be given guidance on how to apply the final sentence of section 2(a), including an indication of whether "may" is mandatory,

whether assessors may reappraise property assessed prior to 1975, and whether assessors may adopt the literal 1975-1976 roll for this year, since time is short, and engage in detailed reappraisals later.

*7. The Legislature should determine the meaning of the phrase "after the 1975 assessment." May reassessment up to full market value occur only for transfers after July 1, 1978 or also for transfers which occurred after March 1, 1975?

SECTION 2(b): "THE FAIR MARKET VALUE BASE MAY REFLECT FROM YEAR TO YEAR THE INFLATIONARY RATE NOT TO EXCEED TWO PERCENT (2%) FOR ANY GIVEN YEAR OR A REDUCTION AS SHOWN IN THE CONSUMER PRICE INDEX OR COMPARABLE DATA FOR THE AREA UNDER TAXING JURISDICTION."

1. The Legislature should define the phrases "consumer price index" and "comparable data for the area under taxing jurisdiction."

2. Legislation would be desirable to indicate whether the assessor is required to increase or decrease the fair market value base as the consumer price index fluctuates regardless of the actual increased or decreased value of the property. In other words, does "may" mean "must"?

*3. The Legislature could give assessors guidance as to whether the 1978 full cash value should be identical to the 1975-76 full cash value or the 1975-76 full cash value increased by two percent compounded annually for three years.

SECTION 3: NO COMMENTS AT THIS TIME

SECTION 4: "CITIES, COUNTIES AND SPECIAL DISTRICTS BY A TWO-THIRDS VOTE OF THE QUALIFIED ELECTORS OF SUCH DISTRICT, MAY IMPOSE SPECIAL TAXES ON SUCH DISTRICT, EXCEPT AD VALOREM TAXES ON REAL PROPERTY OR A TRANSACTION TAX OR SALES TAX ON THE SALE OF REAL PROPERTY WITHIN SUCH CITY, COUNTY OR SPECIAL DISTRICTS."

1. The term "qualified elector" in section 4 is not defined. This is an example of a term susceptible to judicial interpretation. Several courts have indicated the term means two-thirds of those voting, and our office is currently advocating before the State Supreme Court that those words could in no case mean two-thirds of all persons 18 years or older. The Legislature may wish to clarify the definition, and give early guidance to local government and the courts.

2. The Legislature should define "special taxes" indicating whether the term means only newly imposed taxes, increases in existing taxes, all taxes presently authorized other than property taxes, or some combination of the three.

3. The Legislature should clarify what is meant by the phrase "on such district." Normally taxes are not imposed "on" a district but upon events such as transactions occurring in a district or incomes of persons residing therein.

SECTION 5. "THIS ARTICLE SHALL TAKE EFFECT FOR THE TAX YEAR BEGINNING ON JULY 1 FOLLOWING THE PASSAGE OF THIS AMENDMENT, EXCEPT SECTION 3 WHICH SHALL BECOME EFFECTIVE UPON THE PASSAGE OF THIS ARTICLE."

*1. If deemed necessary the Legislature could enact urgency legislation extending the various deadlines for the budget process and for the assessment, equalization, levy and collection of property taxes on real property.

2. The Legislature should consider whether the one percent limit will apply to unsecured taxes collected for the fiscal year 1978-1979.



OFFICE OF THE ATTORNEY GENERAL

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**Division of Assessment Standards
SACRAMENTO**

June 15, 1978

TO ALL MEMBERS OF THE LEGISLATURE:

This office recently sent a letter to all members of the Legislature advising you that Proposition 13 requires the Legislature to enact enabling legislation. The major need discussed in that letter was the creation of some system of apportionment of funds at the local level. We are aware that the first priority of the Legislature is the creation of such an interim system and the disposition of the state surplus.

In that letter, the Attorney General indicated that we would be in further communication with you concerning issues where legislative clarification would be helpful. The purpose of this letter is to call these matters to your attention. The attached list is not exhaustive, nor is it intended to imply that legislative action is necessary in all cases. Some issues could be clarified by judicial interpretation. An excellent example is the term "qualified electors" as used in section 4. There is considerable judicial authority suggesting that term will be construed by the courts to mean that special taxes may be imposed by a two-thirds vote of those voting on the proposition. (See e.g. East Bay Etc. Water Bonds of 1925 v. Hadsell (1925) 196 Cal.725, 744, et seq.)

Other issues may best be clarified by a delegation of authority to a state agency, such as the State Board of Equalization, to adopt rules and regulations. The Board has already disseminated a staff memo covering many of these issues. Several items on the attached list are

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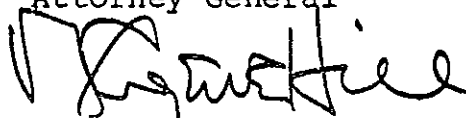
marked by an asterisk. These are areas where county assessors will be implementing this measure. Particular attention to these areas may be appropriate. Many of these items are addressed in the staff memo distributed by the Board of Equalization. On Wednesday the Board also proposed instructions to county assessors on several of these items. Adoption of the proposed rules is set for Hearing on June 29.

The inclusion of an item on this list does not imply that any part of Article XIII A is necessarily invalid without legislative clarification. However, it is our conclusion that the Legislature should consider these issues in order to reduce ambiguity, give guidance to the courts and insure that Proposition 13 is carried out with uniformity and a minimum of disruption. This office stands ready to aid the Legislature in this drafting effort. The staff of this office is available to provide you with any appropriate assistance.

We will also communicate with you further as other matters come to our attention that may require legislative action.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

A handwritten signature in dark ink, appearing to read "N. Eugene Hill", is written over the typed name and title.

N. EUGENE HILL
Chief Assistant Attorney General

Attachments